

LICENSING, REGULATION AND ALCOHOL STRATEGY

Buying a Unit and into a Body Corporate

When buying a flat, unit or an apartment in a body corporate you should note that you are buying both the unit title and a share in the common property. This fact sheet provides a guide on what you need to consider before buying into a body corporate and what you should ask at the time of purchase.

What is a Body Corporate?

A body corporate is a legal entity that is created when land is subdivided and a unit plan is registered under the *Unit Titles Act* (the *Act*). All proprietors within the unit plan automatically become members of the body corporate which owns the common property.

Why Choose To Buy Into a Body Corporate?

Living in a flat, unit or apartment can offer a great lifestyle at an affordable price. People are often attracted to this style of living because of location to conveniences such as shops, cafes, public transport, schools and work.

Living in a communal environment can also provide increased security and shared cost and responsibility for maintenance.

Issues that May Affect Your Decision to Buy Into a Body Corporate

Some of the issues to consider before you buy into a body corporate are:

Open space and recreational facilities – open space and outdoor living areas are often small and may not suit your needs if you have children and pets. You should check the location of parks and recreational facilities in the area;

Construction and design of the building - the construction and design of the building will affect your lifestyle. Poor construction may result in you incurring expensive maintenance costs, as can the age of the building. It is a good idea to obtain an engineer's or architect's report to identify essential services to be maintained and any minor or major faults that require fixing;

Noise - poor design and construction of the building can result in high levels of noise and lack of privacy. Living close to neighbours can lead to disputes and strained relationships;

Parking – you should establish the number of parking bays allocated to the residence and number and location of bays allocated for visitors. If you have regular visitors it may be an inconvenience if there is not adequate parking onsite or nearby;

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Security – you should check the access to the property and building and security generally, such as security doors, intercoms and night lighting. You might also wish to establish the break-in and vandalism levels of the area;

Body corporate rules or articles – the *Act* sets out standard rules or articles which provide a framework for the management of units and the common property by a body corporate. The articles clarify the rights and obligations of the people involved with the units and may be changed by the body corporate. All unit owners, tenants and other occupiers of a unit are bound by the articles.

The rules or articles may include pet restrictions, noise restrictions, specific use and enjoyment of common property and cover issues such as the cleaning and use of balconies (for example, the hosing of elevated balconies may be prohibited for safety reasons and the hanging of laundry over railings may be prohibited to maintain standards and appearance);

Social dynamics - you should consider how many units are in the complex, how many are owned by individuals or organisations and how many are owner-occupied or rented. Other factors to consider are the age mix of owner-occupiers and tenants, the turnover of tenants and the general harmony amongst the members of the body corporate.

Lot Entitlement and Lot Liability

When you buy into a body corporate, you buy your individual lot and a share in the common property. What you own will be set out in a unit plan. A unit plan divides a building and its associated land into units, each of which has a unit title and common property. Common property is that part of the land and building in the unit plan that does not form part of any unit, for instance, stairways, passages, driveways, swimming pool areas, communal gardens and car park.

The unit plan will also set out lot entitlement and lot liability. Lot entitlement is the owner's proportionate share of ownership in the assets such as common property held by the body corporate. It can also determine voting rights. Lot liability is the proportion of the body corporate expenses which a lot owner is obliged to pay.

Body Corporate Fees

A body corporate member has particular rights and responsibilities as set out in the *Unit Titles Act*. As the body corporate is responsible for the use and maintenance of the common property, as an owner you will be required to make financial contributions to the body corporate to cover the costs of the management, security, cleaning, repairs, maintenance and insurance of the building and common property. If there are shared facilities such as a lift, swimming pool, gym equipment, or barbeque or play area, these will add to the ongoing cost of living in a body corporate.

You may also be liable to contribute to a reserve or sinking fund to cover anticipated costs of repairs and maintenance to the common property, such as painting of the building, or replacement of essential items such as lifts or air-conditioning units.

You should check the amount of the fees and the frequency of payment, and determine whether there is a maintenance program and whether the body corporate has enough funds in its working accounts to maintain the property. A

special levy will need to be raised in the event that there are insufficient funds to cover works. This levy can be a significant amount.

As a property owner you will also be required to pay general household expenses such as local council rates, water, electricity, telephone charges, and contents insurance.

Basic Information You Should Obtain

If you decide to proceed to buy into a body corporate, you should determine whether a body corporate manager has been appointed, the amount of management fees and services provided.

You should also determine the duties, functions and powers of the body corporate, what powers are delegated to the manager and the members of the committee, the frequency of committee meetings and when the next annual general meeting is due to be held.

You should obtain copies of the minutes of the last two or three annual general meetings, including financial statements and copies of any minutes of committee meetings and any maintenance program.

This will help you to determine how the body corporate is operating, whether there may be expensive maintenance issues emerging, whether there are possible body corporate fee increases, whether there are any legal or insurance claims pending or current disputes or other liabilities.

A body corporate certificate under section 37 of the *Unit Titles Act* will be sought and gained during the conveyancing process, if not obtained earlier. This certificate will provide essential information about the lot and the body corporate. It will specify whether any fees in respect of the unit are unpaid and the amount and the date on which next contributions are due. It should also provide a warning about any proposed works, debts associated with the lot or the body corporate and potential or existing legal claims.

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